APPENDIX

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Cause No. 45024

IN THE DISTRICT COURT OF THE THIRTEENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA IN AND FOR THE COUNTY OF YELLOWSTONE

PAT OSTERMILLER, an infant, by EMMA OSTERMILLER, her guardian,

Plaintiff,

vs.

MICHAEL PARKER,

Defendant.

MICHAEL PARKER, a minor, by WILLIAM PARKER, his guardian ad litem,

Third-Party Plaintiff,

vs.

NATIONWIDE MUTUAL INSURANCE COMPANY; GLENS FALLS INSURANCE COMPANY; STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY; and JOHN DOE INSURANCE COMPANY,

Third-Party Defendants,

vs.

WILLIAM G. PARKER and MARGARET PARKER,

Third-Party Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action being submitted to the Court, pursuant to the Stipulation of all of the parties appearing through their attorneys on July 11, 1967, and by an Order of the Court dated September 8, 1967, whereby it was agreed that issue of insurance coverage by Nationwide Mutual Insurance Company, Glens Falls Insurance Company and State Farm Mutual Automobile Insurance Company would be submitted to the Court on written Briefs, in advance of trial, to determine the issue of insurance coverage, and the case being so submitted, and the court having entered a judgment in favor of Nationwide Mutual Insurance Company and State Farm Mutual Automobile Insurance Company, on November 15, 1967, decreeing that said third-party defendants have no obligation under their respective policies to the third-party plaintiff, and further decreeing that the insurance policy issued by the third-party defendant, Glens Falls Insurance Company, did provide insurance coverage on the third-party plaintiffs, and further the third-party defendants, Nationwide Mutual Insurance Company and State Farm Mutual Automobile Insurance Company, having now filed a Motion for Summary Judgment to determine the same legal question, and the parties having stipulated that the said Motion for Summary Judgment may be decided upon the same briefs as were filed pursuant to stipulation and order referred to above, and the parties having waived

said notice of hearing on said Motion for Summary Judgment, and the said Motion for Summary Judgment having been presented to the court. The court being fully advised of the premises finds as follows:

FINDINGS OF FACT

1. The third-party defendant, Nationwide Mutual Insurance Company, insured the automobile owned by William G. Parker, however, said policy did not afford coverage on the vehicle driven by Michael Parker which is the subject of this action.

2. That the third-party defendant, State Farm Mutual Automobile Insurance Company, insured the vehicle in which the plaintiff was riding at the time of the accident, said policy providing "uninsured motorists" coverage on said vehicle, however, the court having found that insurance coverage was provided for the vehicle operated by the defendant, Michael Parker, by Glens Falls Insurance Company, said State Farm Mutual Automobile Insurance Company does not have any obligations under its policy to the third-party plaintiff.

3. That the insurance policy issued by third-party defendant, Glens Falls Insurance Company, on Midland Dodge, afforded insurance coverage to the vehicle operated by Michael Parker, the subject of this action, at the date of the accident. And, that said third-party defendant's policy does provide insurance coverage to the third-party plaintiffs.

CONCLUSIONS OF LAW

1. Insurance policy issued by the third-party defendant, Glens Falls Insurance Company, does provide insurance coverage to the third-party plaintiffs.

2. The third-party defendants, Nationwide Mutual Automobile Insurance Company, have no obligations under their respective policies to the third-party plaintiffs.

Let Judgment be entered accordingly.

Dated this 30th day of November, 1967.

C. B. SANDE
District Judge

Cause No. 45024

IN THE DISTRICT COURT OF THE THIRTEENTH JUDICIAL DISTRICT OF THE STATE OF MONTANA IN AND FOR HE COUNTY OF YELLOWSTONE

PAT OSTERMILLER, an infant,
by EMMA OSTERMILLER, her guardian
Plaintiff,

vs.

MICHAEL PARKER,
Defendant.

MICHAEL PARKER, a minor, by
WILLIAM PARKER, his guardian ad litem,
Third-Party Plaintiff,

vs.

NATIONWIDE MUTUAL INSURANCE COMPANY; GLENS FALLS INSURANCE COMPANY; STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, and JOHN DOE INSURANCE COMPANY,
Third-Party Defendants,

vs.

WILLIAM G. PARKER and
MARGARET PARKER,
Third-Party Defendants.

JUDGMENT

The parties hereto having Stipulated on July 11, 1967, that the issue of insurance coverage by Nationwide Mutual Insurance Company, Glens Falls Insurance

Company, Glens Falls Insurance Company and State Farm Mutual Automobile Insurance Company, third-party defendants, be submitted to the Court for decision on the basis of depositions on file herein and written briefs, and the Court having entered Judgment on behalf of Nationwide Mutual Insurance Company, and State Farm Mutual Automobile Insurance Company and against Glens Falls Insurance Company, and Nationwide Mutual Insurance Company and State Farm Mutual Automobile Insurance Company having now filed a Motion for Summary Judgment upon the issue of insurance coverage and the attorneys for the third-party defendants having entered into a stipulation agreeing *that the Court can now enter its judgment upon the Mo*tion for Summary Judgment without further notice to the parties, and upon the grounds that the pleadings, answers to interrogatories and depositions on file herein, and the briefs submitted by the third-party defendants pursuant to the stipulation of July 11, 1967, and the order of the court dated September 8, 1967, the Court now enters Judgment on the Motion for Summary Judgment, said judgment to supersede that judgment entered by the court on the 15th day of November, 1967.

And the Court having filed its Findings of Fact and Conclusions of Law,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED by the court that the in-

surance policy issued by the third-party defendant, Glens Falls Insurance Company, does provide insurance coverage to the third-party plaintiffs, and further that third-party plaintiff do have andn recover $571.80 from third-party defendant, Glens Falls Insurance Company.

IT IS FURTHER ADJUDGED, DECREED AND DECLARED that third-party defendant, Nationwide Mutual Insurance Company and State Farm Mutual Automobile Insurance Company, have no obligation under their respective policies to the third-party plaintiffs.

Dated this 30th day of November, 1967.

C. B. SANDE
District Judge

No. 11438

IN THE SUPREME COURT

of the

STATE OF MONTANA

1968

PAT OSTERMILLER, an infant by EMMA OSTERMILLER, her guardian,

Plaintiff,

vs.

MICHAEL PARKER,

Defendant.

MICHAEL PARKER, a minor, by WILLIAM PARKER, his guardian ad litem,

Third-Party Plaintiff and Respondent,

vs.

NATIONWIDE MUTUAL INSURANCE COMPANY; GLENS FALLS INSURANCE COMPANY; STATE FARM MUTUAL, et al.,

Third-Party Defendants and Appellants.

Appeal from: District Court of the Thirteenth Judicial District, Honorable C. B. Sande, Judge, presiding.

Counsel of Record:

For Respondents

Cooke, Moulton, Bellingham, Longo and Mather, Billings, Montana
Ward Swanser argued, Billings, Montana.

Crowley, Kilbourne, Haughey, Hanson, Gallagher and Bruce R. Toole, Billings, Montana
Bruce R. Toole argued, Billings, Montana.

For Appellants

Robert L. Kelleher argued, Billings, Montana.

Submitted: September 11, 1968
Decided: December 12, 1968

Filed December 12, 1968

THOMAS J. KEARNEY
Clerk

Mr. Chief Justice Harrison delivered the Opinion of the Court.

On July 15, 1964, William Parker purchased a 1956 two door Mercury automobile from Midland Dodge Inc. A 1954 two door Chevrolet was traded in on the Mercury, and William Parker signed a contract with Midland Dodge after his son, Michael, paid the dealer $100 in addition to the trade-in. Apparently, after two additional payments of $38 each which were to be made on August 2 and August 20, 1964, the Mercury was to belong to Michael.

At the time of the trade William Parker signed the purchase order agreement and also signed a promissory note. Midland Dodge kept the certificate of title, the certificate of registration, the notice of lien and the release of lien.

On July 26, 1964, Michael Parker was involved in an accident with an automobile driven by one Lloyd Papke, and in which one Pat Ostermiller was a passenger. Thereafter, on August 1 or 2, 1964, after the accident, William Parker paid the balance of $76 and Midland Dodge gave him the certificate of title, the certificate of registration, the notice of lien and the release of lien. William Parker failed to send the title to the registrar of motor vehicles at Deer Lodge because, as he put it in his deposition, "I didn't see no sense in it * * * because the car was demolished."

Subsequently there arose an original action, Pat Ostermiller v. Michael Parker, brought by Miss Ostermiller for injuries she sustained in the accident on July 26, 1964. Michael Parker, through William Parker, his guardian ad litem, then filed a third party complaint against Nationwide Mutual Insurance Company, the insurance carrier of William Parker; Glens Falls Insurance Company, the insurance carrier of Midland Dodge; State Farm Mutual Automobile Insurance Company, the insurance carrier of Pat Ostermiller's parents; and John Doe Insurance Company, the insurance carrier of Lloyd Papke.

The third party complaint alleged, *inter alia,* that the third party defendant, Nationwide, had in effect on July 26, 1964, a policy of liability insurance insuring William Parker and his son, Michael, who was alleged to be a resident of the same household, and that the

policy afforded coverage to persons operating non-owned and owned automobiles; that Glens Falls had in force at the time of said accident a policy of insurance insuring Midland Dodge; that if no coverage was afforded by either Nationwide or Glens Falls, then Pat Ostermiller was covered by the uninsured motorist coverage of a policy issued by State Farm Mutual to her parents.

In addition, the third party complaint alleged that John Doe Insurance Company had issued its policy of insurance providing for uninsured motorist coverage to Lloyd Papke, the driver of the automobile in which Miss Ostermiller was riding at the time of the accident. Apparently, John Doe Insurance Company was dismissed by the court on the grounds that there was no uninsured motorist coverage in that policy.

The depositions of Michael and William Parker were taken, the originals or copies of the policies issued by the three remaining insurance firms were submitted to the court as were copies of the certificate of title and a contract for agreement of sale between Midland Dodge and William Parker. The matter was then submitted to the court on briefs. Finally, based on the stipulation entered into by counsel for the three insurance companies submitting the matter on briefs, the court granted a motion for summary judgment in favor of Nationwide and State Farm and against Glens Falls.

Thereafter, because the original actions of Pat Os-

termiller v. Michael Parker and Lloyd Papke v. Michael Parker had been set for trial and because the court refused to postpone trial pending this appeal, Glens Falls settled the personal injury claim of Pat Ostermiller (who had married Lloyd Papke) and the property damage claim of Lloyd Papke. Glens Falls also paid to John C. Sheehy, Esq., attorney for the Parkers, $500 in attorney fees and reimbursed him for court costs in the amount of $21.80. These sums were contained in the judgment signed by District Judge C. B. Sande.

Glens Falls now appeals from the summary judgment and contends that either Nationwide or State Farm, under their uninsured motorist coverage, are liable over to Glens Falls for the sums paid to the Papkes as well as for the money paid to attorney Sheehy.

Appellant contends that failure of William Parker to submit title to the registrar of motor vehicles as required by section 53-159(b), R.C.M. 1947, should not work prejudice against Midland Dodge or its insurer, Glens Falls. The subsection in question reads as follows:

> "Within ten (10) days thereafter (meaning after a transfer of title or interest), the transferee shall forward both the certificate of ownership so endorsed and the certificate of registration, together with the information required under section 53-107, to the registrar, who shall file the same upon receipt thereof and no certificate of ownership and certificate of registration shall be issued by the registrar of motor vehicles until the outstanding certificates

> are surrendered to that office or their loss established to his reasonable satisfaction."

In essence the appellant, Glens Falls, is contending that on July 15, 1964, there was a completed sale to William Parker so that William Parker's liability insurance policy covered the accident and so exempted Glens Falls and its insured, Midland Dodge, from liability. (Nationwide's policy issued to William Parker provided that for a period of 30 days any new automobile purchased by Mr. Parker would be covered even though the insurance company had not been notified of the purchase. As events developed, Mr. Parker had not notified his insurance carrier that he had purchased another automobile.)

We think this case can be decided on *one ground:* Whether or not there had been a completed sale, for if there was a completed sale there is no doubt Nationwide would be liable. However, we hold that there was not a completed sale. The Montana code section that controls in this case is section 53-109(d), which reads:

> "Until said registrar shall have issued a certificate of registration and certificate of ownership and statement as hereinbefore provided, delivery of any motor vehicle shall be deemed not to have been made and title thereto shall not have passed and said intended transfer shall be incomplete and not be valid or effective for any purpose."

This Court has previously held that the code section means exactly what it says. (Safeco Ins. Co. v.

N'western Mutual Ins. Co., 142 Mont. 155, 382 P.2d 174 (1963).) In that case at 164 we said:

> "There is nothing unrealistic, technical or artificial about this simple procedure for the transfer of ownership of a motor vehicle. While defendants contend that even when following the statutory procedure dire consequences could result because of what might occur during the ten-day period, it seems to us rather clear that when the seller has executed the transfer upon the certificate of ownership and delivered it and the motor vehicle the sale is complete and any delay on the part of the registrar in issuing the new certificate of ownership would have no effect. In any regular transaction the new certificate of ownership is required to be issued by the registrar and issues as a matter of course. The transfer then becomes complete and valid and dates back to the time of the transfer between the parties. If the transfer has not been made in compliance with the statute and the registrar by reason thereof does not issue a new certificate of ownership, clearly there was no transfer of ownership in its inception."

We affirm what we said in that case. Appellant argues that there was a completed stale on July 15, 1964, and further argues that under section 53-109(b) William Parker had ten days in which to comply with the statute in order to effect a completed transfer. That is, Mr. Parker had until July 25th, the day before the accident, to comply with the statute, and that his failure to do so should not prejudice Glens Falls or Midland Dodge. Yet it must be remembered that during those 10 days, and in fact until August 1 or 2, when the note was paid off, Midland Dodge was in possession of the

certificates. It was Midland Dodge's own omission, their failure to give Mr. Parker the certificates, that prevented his forwarding them to the registrar of motor vehicles. It is clear from Mr. Parker's deposition, when he says he knew from previous dealings that Midland Dodge would keep the certificates, that Midland Dodge intended to keep the certificates until the promissory note was paid. His testimony on that point is uncontradicted.

In effect, Midland Dodge was saying: We're going to keep these certificates for 36 days (July 15 to August 20 when the second payment will be due) and if you don't pay the note we will repossess the car. Under those circumstances it can hardly be contended that they felt they had made a completed sale. At the same time that they retained possession of the certificates they also want to contend that it was Mr. Parker's duty to send those certificates to the registrar and that since he did not do so they should not be prejudiced. We will not be a party to any such scheme and in doing so hold that Mr. Parker's insurance carrier should be liable for an omission on the part of Midland Dodge. Instead we hold in accord with what we said in the Safeco case, cited supra, and hold that there was no completed sale.

Next is the question whether Nationwide should be liable as insurer of a non-owned vehicle while such vehicle is being operated by the insured or any member

of his household. We think it should not. The Nationwide policy specifically provided that coverages under the policy should extend to any other land motor vehicle provided it was not furnished for regular use to the policyholder or a member of the same household. Since we have held that there was no completed sale here, we must conclude that the car was furnished for regular use to the policyholder or a member of the same household and was so excluded by the policy provisions of the Nationwide policy from coverage under that policy.

For the foregoing reasons we affirm the judgment below in favor of Nationwide and State Farm and against Glens Falls.

JAMES T. HARRISON
Chief Justice

We concur:

FRANK I. HASWELL
HUGH R. ADAIR
WESLEY CASTLES
JOHN CONWAY HARRISON
Associate Justices